

**AN OUTLINE FOR
REAL ESTATE TITLE CLEARANCE AND LOAN CLOSING
FOR RHS REAL ESTATE SECURED LOANS
[Texas Instruction (RD) 1927-B]
[Revised July, 2005]**

I. INTRODUCTION -

A. Points to Remember -

1. Title insurance is required - Title insurance is generally required for all real estate secured loans. See Texas Instruction (RD) 1927-B, § 1927.50(c) for limited exceptions.

2. Read the commitment and the policy - It is the loan official's responsibility to insure that the commitment and the policy are correct. § 1927.55(g) and 1927.58(d).

It is the loan official's responsibility to insure that the exceptions on the title policy are acceptable. § 1927.55(f).

3. Access to the security property must be confirmed - Before a real estate secured loan is made, the loan official must first determine that there is access from a public road to the real estate security. § 1927.55(f)(4).

4. Make sure that the deed of trust is correctly prepared and recorded - Before the real estate secured loan is made, make sure that the deed of trust is correctly prepared. § 1927.57(b).

5. Make sure that RHS gets the lien priority which is required or desired - The title policy should correctly reflect RHS's lien priority.

6. Review loan documents and title policy after loan closing - It is the responsibility of the approval official to review all documents after closing and recording to insure that all requirements of the agency have been satisfied, that the documents have been correctly prepared, signed and recorded (where necessary) and that the title policy is correct. If errors are detected, it is the approval official's responsibility to have those errors corrected promptly.

7. Call the State Office or OGC if there are any questions or problems.

II. REVIEWING THE COMMITMENT -

A. Validity. Note the requirements for validity. It must be countersigned by an authorized representative.

B. The effective date. The commitment is valid only for 90 days from the effective date.

Ordinarily, you would not close the loan with a stale or invalid commitment.

C. **Disclosure Requirements.** Note the requirement that you must disclose in writing any matters which may affect the title or the mortgage. If you fail to do this, the title insurance may be invalid and ineffective.

D. **Schedule A, No. 1(c).** The **policy amount** must be in the amount of the loan.

The **name of the insured** must be the "**United States of America, acting through the Rural Housing Service.**"

The **name of proposed borrower** or borrowers must be correctly stated.

E. **Schedule A, No. 2.** The interest in the land will ordinarily be "fee simple."

F. **Schedule A, No. 3.** Record title will be in the name of the seller if the RHS is financing the purchase of the land. If the RHS is financing improvements on the land, record title will be in the name of the borrower.

G. **Schedule A, No. 4.** The legal description of the land is inserted here. See § 1927.55(f)(2).
--- The land description in the commitment, in the policy and in the deed of trust must all be the same and must all be consistent with and based upon the survey.
--- The land description must be legally adequate. A survey is always required except in those situations outlined in Texas Instruction 1927-B, § 1927.55(d).

H. **Schedule B.** The items listed on Schedule B will be the exceptions which will appear in the policy. Therefore, the loan official must be certain that all of these exceptions are either acceptable to RHS or are removed.

I. **Schedule C.** The items listed will be exceptions on the policy *unless* they are removed to the title insurance company's satisfaction. The approval official should work with the title company to have any necessary defects cured.

J. **Title Exceptions.** For a general discussion of acceptable or unacceptable title exceptions, see § 1927.55(g). The loan officer must approve all exceptions which will appear on the policy.

1. Area and boundary exception. This is a standard exception on the owner and mortgagee policies. The policies do not insure the area (or quantity) of the land or the location of the boundaries. However, it is the agency's policy to have this exception removed from the title insurance policy if possible. The approval official should work with the title insurance company and provide an acceptable survey to the title insurance company so that this exception may be deleted. An "as built" survey may be acceptable to the title insurance company to remove this exception.

2. Environmental liens. An exception for environmental liens is NOT acceptable.

3. Statutory Liens; liens filed by the state, cities or counties. An exception for these liens is NOT acceptable. Examples of these liens include: A paving lien created under §§ 312.001, *et seq.*, Texas Transportation Code or under §§ 313.001, *et seq.*, Texas Transportation Code; a sanitary sewer assessment lien (created under §§ 402.091, *et seq.*, Texas Local Gov't. Code); a utility service lien (created under § 402.0025, Texas Local Gov't. Code); a municipal health and safety lien (or mowing lien) (created under §§ 342.001, *et seq.*, Texas Health & Safety Code); a county public nuisance abatement lien (or mowing lien) (created under §§ 343.002, *et seq.*, Texas Health & Safety Code); and a Texas Workforce Commission lien (created under § 61.081, Texas Labor Code).

4. Liens for taxes. An exception for tax liens is NOT acceptable. An exception for unpaid ad valorem taxes which are currently payable or which are delinquent is NOT acceptable.

5. Judgments and judgment liens. This sort of an exception is NOT acceptable.

6. Lack of a right of access. This sort of an exception is NOT acceptable.

7. Mineral leases. If any mineral leases are listed as exceptions in the commitment and if these leases have expired because of non-production or non-payment of delay rentals, the approval official must have these exceptions removed if possible. An affidavit of non-production and/or non-payment of delay rentals on a form acceptable to the title insurance company and signed by the lessee may accomplish this purpose. Any such affidavits or similar forms used must be recorded at the borrower's expense.

8. Outstanding mineral rights/mineral reservations. If there are any outstanding mineral rights and unexpired leases, it is the policy of the agency to require that the owners of these rights and leases waive the right to use the surface of the security property for exploration, drilling and/or mining operations, production, transportation and storage and to agree not to disturb the surface of the security property in the exercise of their rights. However, it may not be possible to obtain such a waiver in all cases.

If a waiver of surface use cannot be obtained, the agency has two options: (a) find another site; or (b) waive the title exception. Rural Development Managers have the authority to grant a waiver to this title exception when the granting of the waiver is necessary to facilitate the loan closing and the agency's security position will not be substantially at risk of suffering from possible damage or devaluation due to mineral exploration and production.

9. Easements/rights of way. Exceptions for easements (including rights-of-way) do not have to be removed provided that the easement is specifically located on the land (as opposed to just have an unspecified location anywhere on the tract), its location is shown on the survey of the property and the location of the easement and the terms of the easement will not interfere in any way with the intended use of the property.

10. Any part lying within a public road. This is a standard exception which appears in

many policies. It is acceptable. However, the loan approval official must be certain that the house does not sit in the road and that any set back requirements have been satisfied.

11. Visible and apparent easements. This exception is acceptable provided that it says, "visible and apparent easements not of record." Any easements "of record" must be specifically described in the policy.

12. Other Exceptions. Other exceptions to title may appear in the commitment. All exceptions should be removed if possible and the approval official should work with the title insurance company to see what is needed to remove those exceptions.

The following exceptions are not allowed and must be removed:

- (1) all liens (unless the agency is taking a junior lien);
- (2) the possibility of reverter;
- (3) the possibility of the failure of title;
- (4) any exception which may adversely affect the title to the security property, the suitability of the security property, the value of the security property or the successful use and/or operation of the security property.
- (5) any exception should might impair the validity or priority of the agency's lien; and
- (6) unpaid ad valorem taxes which are currently payable or which are delinquent.

If the loan approval official has questions about any exceptions, he or she should confer with the State Office and/or OGC.

13. Endorsements to Mortgage Policies of Title Insurance. Title insurance companies may issue endorsements to the mortgagee policy to resolve or remove certain title exceptions or to provide additional protection to the insured because of certain problems or exceptions.

Examples of endorsements include: (i) the Access Endorsement (T-23) which is limited to non-residential real property; (ii) Restrictions, Encroachments and Minerals Endorsement (T-19); and (iii) Environmental Protection Lien Endorsement (T-36). The approval official should consult with the State Office about using any endorsements unless Texas Instruction RD 1927-B, 1927.55 (g) permits their use.

K. Arbitration Provision. The policy will contain an arbitration provision unless the loan officer requests that it be deleted. The arbitration provision must be deleted before the policy is issued in all loan situations.

Write a letter to the local agent for the title insurance company requesting this deletion. Remember, the written request must be made before the policy is issued so make the written request before the loan or voluntary conveyance is closed.

When the approval official receives the policy, he or she should review it to make certain that the

provision is deleted. On a mortgagee policy, the following statement should be typed in Schedule B:

Section 13 of the Conditions and Stipulations of this Policy is hereby deleted.

III. REVIEWING THE POLICY -

A. **Review the Policy.** Never assume that the policy will be correct. Always review it carefully to insure that everything is correct.

B. **Schedule A -**

Amount of Insurance - This should be the same as the loan amount.

No. 1 - Name of Insured - This should be "**United States of America acting through the Rural Housing Service.**"

No. 2 - Estate or Interest in land - This should usually be "fee simple."

No. 3 - Title - Title should be vested in the borrower(s).

No. 4 - Description of mortgage - The recorded deed of trust should be described here. If there is land in two counties, then the deed of trust should be recorded in both counties and each recorded deed of trust should be described.

No. 5 - Description of land - The legal description of the land is inserted here. The description must be legally adequate and complete. The same description should be used in the deed of trust. The land description must be based on the survey.

C. **Schedule B, No. 3 - Taxes** - Only taxes for the current year may be described here. However, if the loan is closed after October 1, the taxes for the current year should be paid at closing. In that event, the taxes for the next year should be the exception here.

D. **Schedule B, No. 5 - General Exceptions** - Only those exceptions which the loan official has approved should appear here.

The following exceptions are not allowed and must be removed:

- deed of trust or mortgage liens (unless the agency is taking a junior lien);
- all liens including environmental liens, statutory liens, all liens for taxes, and judgment liens;
- the possibility of reverter;
- the possibility of the failure of title;
- homestead or homestead rights;
- lack of the right of access;
- any exception which may adversely affect the title to the security property, the suitability of

the security property, the value of the security property or the successful use and/or operation of the security property;

- any exception should might impair the validity or priority of the agency's lien; and
- unpaid ad valorem taxes which are currently payable or which are delinquent.

E. **Arbitration deletion:** The loan official must verify that the arbitration provision has been deleted. The following statement should be typed in Schedule B:

Section 13 of the Conditions and Stipulations of this Policy is hereby deleted.

IV. LIENS ON HOMESTEAD - See § 1927.57(b)(2) (for liens for improvements)

V. CONFIRMING ACCESS TO THE SECURITY PROPERTY - The loan official must determine if there is public road access to the security property.

VI. PREPARING AND RECORDING THE DEED OF TRUST - See § 1927.57.

- Use Form RD 3550-14 TX, Real Estate Deed of Trust for Texas. Follow the FMI.
- Use the riders as appropriate (refinancing rider or home improvement/construction rider). Follow the FMI. Non-agency riders may never be used unless there is prior approval of the State Office.
- The deed of trust must be recorded in each county where any part of the security property is located.

VII. VERIFYING RHS'S LIEN PRIORITY - At the outset, the loan official will need to determine what lien priority RHS will need on the land in order to adequately secure the loan to be made.

- The loan official should advise the title company of the RHS's lien priority requirements.
 - The commitment will identify any existing liens on the property on either Schedule B or C.
 - For the loan closing, the loan official must instruct the title company which liens must be released prior to or at closing and which ones may remain on the property.
 - The title policy on Schedule B will identify any prior liens.
 - If RHS is taking a junior lien -
 - the RHS must obtain an Agreement with Prior Lienholder, Form RD TX 1927-8 from the prior lienholder prior to closing; and
 - the Agreement must be recorded in each county where the land is located.
- If an Agreement cannot be obtained from the prior lienholder, RHS may not make the loan.

THE FOLLOWING COMMITMENT FOR TITLE INSURANCE IS NOT VALID UNLESS YOUR NAME AND THE POLICY AMOUNT ARE SHOWN IN SCHEDULE A, AND OUR AUTHORIZED REPRESENTATIVE HAS COUNTERSIGNED BELOW.

COMMITMENT FOR TITLE INSURANCE

Issued by
Blank Title Insurance Company

We (_____) will issue our title insurance policy or policies (the Policy) to You (the proposed insured) upon payment of the premium and other charges due, and compliance with the requirements in Schedule B and Schedule C. Our policy will be in the form approved by the Texas Department of Insurance at the date of issuance, and will insure your interest in the land described in Schedule A. The estimated premium for our Policy and applicable endorsements is shown on Schedule D. There may be additional charges such as recording fees, and expedited delivery expenses.

This Commitment ends ninety (90) days from the effective date, unless the Policy is issued sooner, or failure to issue the Policy is our fault. Our liability and obligations to you are under the express terms of this Commitment and end when this Commitment expires.

By: _____

Authorized Signatory

ATTEST:

Secretary

CONDITIONS AND STIPULATIONS

1. If you have actual knowledge of any matter which may affect the title or mortgage covered by this Commitment, that is not shown in Schedule B, you must notify us in writing. If you do not notify us in writing, our liability to you is ended or reduced to the extent that your failure to notify us affects our liability. If you do notify us, or we learn of such matter, we may amend Schedule B, but we will not be relieved of liability already incurred.
2. Our liability is only to you, and others who are included in the definition of Insured in the Policy to be issued. Our liability is only for actual loss incurred in your reliance on this Commitment to comply with its requirements, or to acquire the interest in the land. Our liability is limited to the amount shown in Schedule A of this Commitment and will be subject to the following terms of the Policy: Insuring Provisions, Conditions and Stipulations, and Exclusions.

SCHEDULE A

Effective Date: _____ GF No. _____
Commitment No. _____, issued _____, 20____, _____m.

1. The policy or policies to be issued are:

- (a) OWNER POLICY OF TITLE INSURANCE (Form T-1)
(Not applicable for improved one-to-four family residential real estate)
Policy Amount: \$ _____
PROPOSED INSURED: _____
- (b) TEXAS RESIDENTIAL OWNER POLICY OF TITLE INSURANCE
----ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)
Policy Amount: \$ _____
PROPOSED INSURED: _____
- (c) MORTGAGEE POLICY OF TITLE INSURANCE (Form T-2)
Policy Amount: \$ **[The amount of the Loan.]**
PROPOSED INSURED: **United States of America acting through the Rural Housing Service**
Proposed Borrower: **[Name(s) of the Borrower(s)]**
- (d) TEXAS SHORT FORM RESIDENTIAL MORTGAGEE POLICY OF TITLE INSURANCE
(Form T-2R)
Policy Amount: \$ _____
PROPOSED INSURED: _____
Proposed Borrower: _____
- (e) MORTGAGEE TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)
Binder Amount: \$ _____
PROPOSED INSURED: _____
Proposed Borrower: _____
- (f) OTHER
Policy Amount: \$ _____
PROPOSED INSURED: _____

2. The interest in the land covered by this Commitment is: **[Fee Simple]**

3. Record title to the land on the Effective Date appears to be vested in: **[Name of the Owner of the land when the Commitment is issued.]**

4. Legal description of the land: **[The description must be legally adequate and complete. The same description must be used on the deed of trust and must be based upon the current survey of the property or the survey being used for the loan.]**

**SCHEDULE B
EXCEPTIONS FROM COVERAGE**

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):
2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
3. Homestead or community property or survivorship rights, if any of any spouse of any insured. (Applies to the Owner Policy only.)
4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
 - a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
 - b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
 - c. to filled-in lands, or artificial islands, or
 - d. to statutory water rights, including riparian rights, or
 - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.
5. Standby fees, taxes and assessments by any taxing authority for the year ____, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Mortgagee Policy of Title Insurance (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year ____ and subsequent years.")

[Note: Only taxes for the current year may be an exception. However, if the loan is closed after October 1, taxes for the current year should be paid at closing and, as a result, the taxes for next year should be the exception here.]

6. The terms and conditions of the documents creating your interest in the land.
7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Mortgagee Title Policy binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a binder is issued.)
8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Mortgagee Policy (T-2) only.)
9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form

Residential Mortgagee Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Mortgagee Policy of Title Insurance (T-2R) only. Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Mortgagee Policy of Title Insurance (T-2R).

10. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):

[The items listed under Item 10 in Schedule B will be the exceptions which will appear in the policy. Therefore, the loan official must be certain that all of these exceptions are either acceptable to RHS or will be removed.]

SCHEDULE C

Your Policy will not cover loss, costs, attorneys fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
 - no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
 - all standby fees, taxes, assessments and charges against the property have been paid,
 - all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,
 - there is legal right of access to and from the land,
 - (on a Mortgagee Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.

[The items listed here will be exceptions on the policy unless they are resolved or removed to the title company's satisfaction. It is the approval official's responsibility to make sure that all items here are resolved prior to loan closing.]

(Form T-7: Commitment for Title Insurance)

MORTGAGEE POLICY OF TITLE INSURANCE

Issued by
Blank Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, Blank Title Insurance Company, a Blank corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Lack of a right of access to and from the land;
4. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
5. The priority of any lien or encumbrance over the lien of the insured mortgage;
6. Lack of priority of the lien of the insured mortgage over any statutory or constitutional mechanic's, contractor's, or materialman's lien for labor or material having its inception on or before Date of Policy;
7. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens;
8. Lack of good and indefeasible title.

The Company also will pay the costs, attorneys' fees and expenses incurred in defense of the title, or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
President

By: - _____
Secretary

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses that arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public

records at Date of Policy, but not excluding from coverage any taking that has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material); or
 - (e) resulting in loss or damage that would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory or constitutional mechanic's, contractor's, or materialman's lien for labor or material having its inception subsequent to Date of Policy.
7. The refusal of any person to purchase, lease or lend money on the estate or interest covered hereby in the land described in Schedule A because of unmarketability of the title.
8. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or other state or federal creditors' rights laws that is based on either (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer or a voidable distribution or voidable dividend, (ii) the subordination or recharacterization of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination or (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure of the Company or its issuing agent to timely file the for record the instrument of transfer to the insured after delivery or the failure of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

SCHEDULE A

File No.

Policy No.

Amount of Insurance \$

Premium \$

DATE OF POLICY _____ a.m.
at p.m.

1.Name of Insured: **United States of America acting through the Rural Housing Service**

2.The estate or interest in the land that is insured as encumbered by the insured mortgage is: **[Fee Simple]**

3.Title to the estate or interest in the land is insured as vested in: **[Name of Borrower(s)]**

4.The insured mortgage and assignments thereof, if any, are described as follows: **[Description of the recorded deed of trust]**

5.The land referred to in this policy is described as follows: **[The description must be legally adequate and complete. The same description must be used on the deed of trust and must be based upon the current survey of the property or the survey being used for the loan.]**

SCHEDULE B

File No.

Policy No.

EXCEPTIONS FROM COVERAGE

This Policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) that arise by reason of the terms and conditions of the leases and easements, if any, shown in Schedule A, and the following matters:

1. The following restrictive covenants of record itemized below, but the Company insures that any such restrictive covenants have not been violated so as to affect, and that future violation thereof will not affect, the validity or priority of the mortgage hereby insured (insert specific recording data or delete this exception):
2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
3. Standby fees, taxes and assessments by any taxing authority for the year _____, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year.

[Note: Only taxes for the current year may be an exception. However, if the loan is closed after October 1, taxes for the current year should be paid at closing and, as a result, the taxes for next year should be the exception here.]

4. Liens and leases that affect the title to the estate or interest, but that are subordinate to the lien of the insured mortgage.
5. (Insert here all other specific exceptions as to superior liens, easements, outstanding mineral and royalty interests, etc.)

[Carefully review all exceptions to insure that only those which have been approved appear on the policy.]

[The following statement must be inserted in Schedule B so that the arbitration provision is deleted: "Section 13 of the Conditions and Stipulations of this Policy is hereby deleted."]

CONDITIONS AND STIPULATIONS**1. DEFINITION OF TERMS.**

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A. The term "insured" also includes:
 - (i) the owner of the indebtedness secured by the insured mortgage and each successors in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);
 - (ii) any governmental agency or governmental instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;
 - (iii) the parties designated in Section 2(a) of these Conditions and Stipulations.
- (b) "insured claimant": an insured claiming loss or damage.
- (c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice that may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
- (d) "land": the land described or referred to in Schedule A, and improvements affixed thereto that by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" also shall include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.
- (g) "access": legal right of access to the land and not the physical condition of access. The coverage provided as to access does not assure the adequacy of access for the use intended.

2. CONTINUATION OF INSURANCE.

- (a) After Acquisition of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of:
 - (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage;
 - (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and
 - (iii) any governmental agency or governmental instrumentality that acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.
- (b) After Conveyance of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only as long as the insured shall have liability by reason of covenants made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the

- insured.
- (c) Amount of Insurance. The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:
- (i) the Amount of Insurance stated in Schedule A;
 - (ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or
 - (iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, or (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest that is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

Subject to the provisions of the policy, upon acquisition of all or any part of the estate or interest in the land pursuant to the provisions of Section 2 of these Conditions and Stipulations, when, after the date of the policy, the insured notifies the Company as required herein of a lien, encumbrance, adverse claim or other defect in title to the estate or interest in the land insured by this policy that is not excluded or excepted from the coverage of this policy, the Company shall promptly investigate the charge to determine whether the lien, encumbrance, adverse claim or defect is valid and not barred by law or statute. The Company shall notify the insured in writing, within a reasonable time, of its determination as to the validity or invalidity of the insured's claim or charge under the policy. If the Company concludes that the lien, encumbrance, adverse claim or defect is not covered by this policy, or was otherwise addressed in the closing of the transaction in connection with which this policy was issued, the company shall specifically advise the insured of the reasons for its determination. If the Company concludes that the lien, encumbrance, adverse claim or defect is valid, the Company shall take one of the following actions: (i) institute the necessary proceedings to clear the lien, encumbrance, adverse claim or defect from the title to the estate as insured; (ii) indemnify the insured as provided in this policy; (iii) upon payment of appropriate premium and charges therefore, issue to the insured claimant or to a subsequent owner, mortgagee or holder of the estate or interest in the land insured by this policy, a policy of title insurance without exception for the lien, encumbrance, adverse claim or defect, said policy to be in an amount equal to the current value of the property or, if a mortgagee policy, the amount of the loan; (iv) indemnify another title insurance company in connection with its issuance of a policy(is) of title insurance without exception for the lien, encumbrance, adverse claim or defect; (v) secure a release or other document discharging the lien, encumbrance, adverse claim or defect; or (vi) undertake a combination of (i) through (v) herein.

4. DEFENSE AND PROSECUTION OF ACTIONS: DUTY OF INSURED CLAIMANT TO COOPERATE.

- (a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the title to the estate or interest or lien of the insured mortgagor, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the company shall exercise its rights under this paragraph, it shall do so diligently.
- (c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the

provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

- (d) In all cases where this policy permits or requires the Company to prosecute or provide a defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. **PROOF OF LOSS OR DAMAGE.**

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 91 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

6. **OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.**

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance or to Purchase Indebtedness.
- (i) to pay or tender payment of the amount of insurance under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or
- (ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage together with any collateral security, to the Company upon payment therefore. Upon the exercise by the Company of either of the options provided for in paragraphs a(i) or (ii), all liability and obligations to the insured under this policy, other than the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

- (b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured or With the Insured Claimant.
- (i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim

- insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or
 - (ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION AND EXTENT OF LIABILITY.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

- (a) The liability of the Company under this policy shall not exceed the least of:
 - (i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2(c) of these Conditions and Stipulations;
 - (ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or
 - (iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against the policy at the date the insured claimant is required to furnish to Company a proof of loss or damage in accordance with Section 5 of these Conditions and Stipulations.
- (b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.
- (c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. LIMITATION OF LIABILITY.

- (a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, all as insured, or takes action in accordance with Section 3 or Section 6, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom adverse to the title or to the lien of the insured mortgage, as insured.
- (c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.
- (d) The Company shall not be liable for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land, which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

- (a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce

the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

- (b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.
- (c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE.

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the secured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

11. PAYMENT OF LOSS.

- (a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
- (b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

12. SUBROGATION UPON PAYMENT OR SETTLEMENT.

- (a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies that the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

- (b) The Insured's rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

- (c) The Company's rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the

insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments that provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

13. ARBITRATION.

Unless prohibited by applicable law or unless this arbitration section is deleted by specific provision in Schedule B of this policy, either the company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less SHALL BE arbitrated at the request of either the Company or the Insured, unless the insured is an individual person (as distinguished from a corporation, trust, partnership, association or other legal entity). All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this Policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the Insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. The law of the situs of the land shall apply to any arbitration under the Title Insurance Arbitration Rules. A copy of the Rules may be obtained from the Company upon request.

14. LIABILITY LIMITED TO THIS POLICY: POLICY ENTIRE CONTRACT.

- (a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.
- (c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

15. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision, and all other provisions shall remain in full force and effect.

16. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (insert proper address).

COMPLAINT NOTICE:

Should any dispute arise about your premium or about a claim that you have filed, contact the agent or write to the Company that issued the policy. If the problem is not resolved, you also may write the Texas Department of Insurance, P.O. Box 149091, Austin, TX 78714-9091, Fax No. (512) 475-1771. This notice of complaint procedure is for information only and does not become a part or condition of this policy.

(Form T-2: Mortgagee Policy of Title Insurance)